[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

FILED

U.S. COURT OF APPEALS
ELEVENTH CIRCUIT
June 9, 2004

THOMAS K. KAHN
CLERK

No. 03-12149

D. C. Docket No. 99-02564 CV-T-26-B

GEORGE ALAN LEWIS

Petitioner-Appellant,

versus

JAMES CROSBY,
CHARLIE CRIST, Attorney General of the State of Florida,

Respondents-Appellees.

Appeal from the United States District Court
for the Middle District of Florida

(June 9, 2004)

Before ANDERSON, CARNES and BRIGHT*, Circuit Judges.

PER CURIAM:

*Honorable Myron H. Bright, United States Circuit Judge for the Eighth Circuit, sitting by designation.

George Alan Lewis, a Florida prisoner under sentence of life in prison, appeals from the district court's' denial of his petition for the writ of habeas corpus under 28 U.S.C. § 2254. The parties know the facts and procedural history of this case, and other courts have already described the events leading to Lewis' conviction for rape and murder. See Florida v. Lewis,543 So. 2d 760 (Fla. Ct. App. 1989) (first direct appeal); Lewis v. Florida,566 So. 2d 270 (Fla. Ct. App. 1990) (second direct appeal); Lewis v. Florida,714 So. 2d 1201 (Fla. Ct. App. 1998) (collateral appeal). Therefore, we proceed directly to our holding and supporting rationale. After de novo review of the district court's decision, we affirm the denial of Lewis' petition.

Lewis raises three issues on appeal. The first issue concerns whether the Florida state courts unreasonably applied U.S. Supreme Court precedent, see Haliburton v. Sec'y for the Dep't of Corr.,342 F.3d 1233, 1238 (11th Cir. 2003) (standard of review), by holding that prosecutorial misconduct in withholding evidence from the defense did not rise to the level of a Constitutional violation under Brady v. Maryland,373 U.S. 83, 87 (1963). We note that the Florida Court of Appeals, on collateral review, invited bar disciplinary authorities to investigate the prosecutors' failure to disclose the evidence. Lewis v. Florida,714 So. 2d 1201, 1203 (Fla. Ct. App. 1998) (observing that the prosecution's obligation to disclose evidence is greater under professional responsibility standards than under constitutional standards). However, we agree with the district court that the challenged evidence, considered cumulatively, does not meet the Brady materiality standard because no reasonable probability exists that disclosure would have changed the result of the trial. See Kyles v. Whitley,514 U.S. 419, 422 (1995) (standard of review). Lewis' bloody footprint found at the murder scene, coupled with his failure to explain the footprint in any logical or consistent way, suffices to indicate the withheld evidence, if properly disclosed, would not have resulted in a markedly weaker case for the State or a markedly stronger one for Lewis. See United States v. Scheer,168 F.3d 445, 456 (11th Cir. 1999).

Hon. Richard A. Lazzara, United States District Judge for the Middle District of Florida.

The suppressed evidence, if a part of the record, would not diminish a reviewing court's confidence in the result of Lewis' trial. See Kyles, 514 U.S. at 434.

We note that our conclusion on this point renders moot Lewis' second issue, whether the state courts erroneously conducted a piecemeal rather than collective analysis of the alleged Brady evidence. See Kyles,514 U.S. at 436. Assuming, arguendo, that the state courts did not conduct the required collective analysis, their ultimate disposition would not have changed even if they had. As we described above, proper collective analysis still reveals the challenged evidence as not material under Brady.

Lewis' third and final claim on appeal alleges that the state courts unreasonably applied Giglio v. United States,405 U.S. 150, 153 (1972). Lewis asserts that the State violated Giglio by knowingly using perjured testimony (or failing to correct what the prosecutor later learned was false testimony); that the prosecution improperly prevented the defense from suggesting or implying that a third party murdered the victim; that the prosecution permitted a false answer by witnesses describing the State's non-examination of four bags of potentially exculpatory evidence; and finally that the State improperly permitted a detective toverify the integrity of the third party that Lewis contended was the actual murderer.

However, our review of the record reveals that Lewis has never raised theseargumentsin the Florida courts, which consequently have expressed no view on the merits of this issue. Lewis' failure to exhaust this issue procedurally bars us from ordering the writ to be granted on this basis. See Turner v. Crosby,339 F.3d 1247, 1281 (11th Cir. 2003).

Under the highly deferential standards of review employed under 28 U.S.C. § 2254, we conclude that the state courts did not unreasonably apply federal law by holding that the alleged Brady violations did not undermine confidence in the jury's verdict. We do not address the Giglio issue. For these reasons, we affirm the judgment of the district court denying Lewis' petition for habeas corpus.

AFFIRMED.